

DECISION



13615 *Washington*
Proct

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-196509

DATE: May 1, 1980

MATTER OF: CEDC, Incorporated

DIGEST:

Protest Alleging ~~Allegation~~ that agency did not comply with Presidential policy favoring location of Federal agency offices in central business district is untimely, since it was clear from solicitation that no such preference was to be given and protest was not filed before closing date for receipt of offers as required when protest is based on alleged patent solicitation improprieties.

2. Protester's offer was properly rejected because proposed annual rent was in excess of 105 percent of appraised fair annual rental of leased premises and Public Law 96-52 prohibits award of lease under those circumstances.
3. Protester has not carried burden of proof that it was victim of prejudice.

CEDC, Incorporated (CEDC), protests the award to Tri-Road Associates, Inc. (Tri-Road), of a lease for office space, under solicitation for offers (SFO) No. 2204-000, issued by the Department of Commerce (Commerce), Bureau of the Census (Census).

CEDC alleges that Census disregarded the President's April 9, 1979, statement of policy concerning interagency coordination to assist in revitalizing depressed urban areas, that the award was at a higher price than CEDC offered, that CEDC was the victim of racial prejudice, and that CEDC

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was denied "certain preferential rights due our organization as a minority organization in general."

For the following reasons, the protest is dismissed in part and denied in part.

The Presidential policy statement referred to by CEDC does not, in itself, establish specific requirements for Federal real estate management. However, Executive Order No. 12072, August 16, 1978, does establish a preference for locating Federal agency offices in central business districts (CBD) under certain conditions, and we assume that CEDC is referring to this policy. It is clear from the SFO that no preference was to be granted for buildings located in the CBD. Section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1980), requires all protests based on alleged patent solicitation defects to be filed prior to the closing date for initial proposals. CEDC's protest on this issue was filed after that date and, therefore, is untimely.

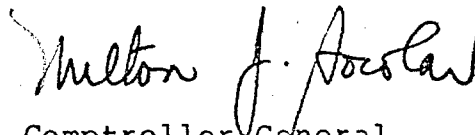
CEDC's rental price was, in fact, lower than Tri-Road's price. However, CEDC's offer was properly rejected because its rental price was in excess of that permitted by Public Law 96-52, 93 Stat. 358, August 13, 1979. Generally, the Government may not enter into leases in which the annual rent exceeds 15 percent of the fair market value of the rented premises. 40 U.S.C. § 278a (1976). Public Law 96-52 provides a limited exemption from this requirement to Census for the purpose of carrying out the 1980 decennial census. However, Public Law 96-52 does provide that "* * * no lease may be entered into * * * at a rental in excess of 105 percent of the appraised fair annual rental (FAR) of the leased premises." Since CEDC's proposed annual rent exceeded 105 percent of the appraised FAR by \$11,368.75, its offer could not be accepted.

Regarding its allegation of racial prejudice, CEDC has provided no evidence supporting the allegation and Census has denied the allegation. The protester has the burden of affirmatively proving

its case, and that burden has not been met where conflicting statements of the protester and the agency are the only evidence in the record. See, e.g., Reliable Maintenance Service, Inc.,--request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337.

Concerning its final allegation, we are not aware of any "preferential rights" due CEDC, and CEDC has not specified any such rights.

Commerce, in its response to the protest, stated that CEDC's proposal was received 7 days late, a statement not rebutted or otherwise explained by CEDC. From the record, it appears that CEDC's proposal should have been rejected on that basis by Census. Commerce has informed us that the appropriate Census procurement personnel have been apprised of the impropriety so that similar problems might be avoided in the future.



For The Comptroller General
of the United States